

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

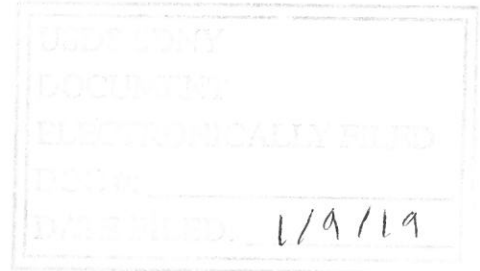
DAVID LANE JOHNSON,

Plaintiff,

-v-

NATIONAL FOOTBALL LEAGUE PLAYERS
ASSOCIATION, *et al.*,

Defendants.



No. 17-cv-5131 (RJS)
ORDER

RICHARD J. SULLIVAN, Circuit Judge:

Now before the Court is Plaintiff's motion for discovery pursuant to Federal Rule of Civil Procedure 56(d). (Doc. No. 141.) For the reasons stated below, the motion is DENIED.

I. BACKGROUND

On October 3, 2018, the Court granted the motion of Defendant National Football League Players Association ("NFLPA") to dismiss Plaintiff's First Amended Complaint except as to Plaintiff's claim under Section 104 of the Labor Management Reporting and Disclosure Act ("LMRDA"), which alleged that the NFLPA refused to provide, upon request, a copy of the full operative collective bargaining agreement between the parties. (Doc. No. 125.) In that Order, the Court made clear that the only relief to which Johnson could be entitled under this claim would be a copy of the complete agreement. (*Id.* at 17 n.3.) Subsequently, on October 16, 2018, the NFLPA produced to Plaintiff what the NFLPA describes as "a complete copy of the 2015 Policy and all agreements that modified the 2015 Policy." (Doc. No. 126 at 4.) On October 23, 2018, the Court issued an order finding that, because Plaintiff's surviving LMRDA claim "turns on the question of whether the NFLPA's October 16 document production has mooted the claim . . . further discovery is not appropriate," and set a briefing schedule for the NFLPA's motion for summary judgment. (Doc. No. 131.) On November 19,

2018, Plaintiff filed a letter regarding a contemplated motion seeking discovery under Federal Rule of Civil Procedure 56(d). The NFLPA responded on November 26, 2018. (Doc. No. 144.) After directing a reply by Plaintiff, which was filed on December 3, 2018 (Doc. No. 149), the Court deemed the motion made and fully briefed (Doc. No. 146).

II. LEGAL STANDARD

Where a party subject to a motion for summary judgment shows that it is unable to present facts to oppose the motion, the Court may “(1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order.” Fed. R. Civ. P. 56(d). To succeed on a Rule 56(d) motion, a party must show “(1) what facts are sought and how they are to be obtained; (2) how these facts are reasonably expected to raise a genuine issue of material fact; (3) what efforts the affiant has made to obtain them; and (4) why the affiant’s efforts were unsuccessful.” *Gualandi v. Adams*, 385 F.3d 236, 244 (2d Cir. 2004).

III. DISCUSSION

The Court previously determined that discovery is not appropriate at this stage because Plaintiff’s surviving LMRDA claim “turns on the question of whether the NFLPA’s October 16 document production has mooted the claim.” (Doc. No. 131.) Because Johnson now requests discovery that is not related to his remaining claim and is not proportional to the needs of the case, Johnson has furnished no basis for the Court to depart from its earlier determination.

Plaintiff’s renewed request for discovery misrepresents the scope of his surviving LMRDA claim. Contrary to Plaintiff’s assertion, Plaintiff’s claims against the NFLPA for “disciplin[ing] or retaliat[ing] against Johnson for asserting his rights under the LMRDA” (Doc. No. 141) were dismissed by this Court as part of Johnson’s duty of fair representation claim (Doc. No. 125 at 15–16). Plaintiff’s lone surviving claim is his claim under Section 104 of the LMRDA, which provides that a union must “forward a copy of each collective bargaining agreement made by such labor organization with any employer to any employee who requests such a copy and whose rights as such employee are directly

affected by such agreement.” 29 U.S.C. § 414. Factual questions regarding the motivations and reasons underpinning the NFLPA’s conduct with respect to Plaintiff’s LMRDA rights are irrelevant to the resolution of Plaintiff’s remaining claim. Accordingly, the Court is unpersuaded by Plaintiff’s argument that discovery as to “why the NFLPA repeatedly refused to provide Johnson a complete copy of the 2015 policy” and “why the NFLPA otherwise retaliated against him” is necessary to resolve the summary judgment motion. (Doc. No. 141.) Similarly, Plaintiff’s arguments that discovery is necessary to test the credibility of NFLPA employees, probe the existence of UCLA laboratory collection proceedings, and delve into the details of the operation of the two-year testing period all involve factual issues that do not bear upon the narrow issue of justiciability at the heart of the NFLPA’s motion. Accordingly, Plaintiff has failed to show facts “reasonably expected to raise a genuine issue of material fact” and has not met the standard for discovery under Federal Rule of Civil Procedure 56(d).

IV. CONCLUSION

For the foregoing reasons, Plaintiff’s motion for discovery pursuant to Federal Rule of Civil Procedure 56(d) is DENIED. In accordance with the timeline set forth in the Court’s November 29, 2018 Order (Doc. No. 148), IT IS HEREBY ORDERED THAT Plaintiff shall respond to the NFLPA’s motion for summary judgment no later than Wednesday, January 16, 2019, and the NFLPA shall file its reply no later than Monday, January 28, 2019.

SO ORDERED.

Dated: January 9, 2019
New York, New York



RICHARD J. SULLIVAN
UNITED STATES CIRCUIT JUDGE
Sitting by Designation